PARTNERSHIP—LIABILITY FOR TORT OF PARTNER.—Plaintiff and defendant were rival grain merchants. The defendant firm consisted of one H. and one S. to whom the conduct of business was given. S. bribed the plaintiff's clerks to reveal to him confidential matters of the plaintiff's business. Plaintiff's business was seriously injured and he sued the rival firm for damages. *Held*, that both partners were liable. *Hamlyn* v. *Houston & Co.* [1903,] 1 K. B. 81.

The test applied by the court was: Was it within the scope of the authority given to S. to obtain the information by legitimate means? The jury found that it was. The fact, therefore, that the agent used unlawful means did not relieve the principal from liabilility. The American cases are in accord with this rule. The only exception appears to be the early N. Y. cases where it was held, that willful wrongdoing by the agent terminated his authority to the extent of that act and released the principal from liability. But the current of later decisions support the principal case.

PLEADING—JOINDER OF ACTIONS—PARTIES.—P insured certain property for F. The property was destroyed by fire through the negligence of S. In a suit by F on the insurance contract, P sought to join S as defendant in the same suit in a count in tort for the negligent destruction of the property, and asked to be subrogated to the right of F in the recovery from S to the extent of S's liability to F. In view of the statutory provision permitting the joinder of actions arising out of the same transaction it was *Held*, that the action in contract and in tort were properly joined and that S was a proper party to the action. *Philadelphia Underwriters* v. *Ft. Worth & D. C. Ry. Co.* (1903), — Tex. App. —, 71 S. W. Rep. 419.

The court said: "Indeed as an original proposition, it is undoubtedly true that a prevention of a multiplicity of suits is desirable and we find no sound reason why in this case the court should not in the same action proceed to determine the rights and liabilities of the respective parties. Such rights and liabilities in their final analysis rest on the same wrongful act omission or transaction. If it be said that thereby the defendant railway company may be delayed in the settlement of the issue in which it is more directly concerned it may be replied that it is, if a wrong doer, in no condition to call for the tenderness of the court, or, if innocent of the alleged wrongs, it may well be required, in the interest of the public, to suffer what in the nature of the case can be but reasonable delay." This holding finds support in the case of *Skipwith* v. *Hurt* (1901), — Tex. —, 60 S. W. Rep. 423. There are a number of cases wherein under particular statutory provisions, an action in tort and in contract arising out of the same transaction have been held to be properly joined, but in each of these cases the same defendants have been liable both in tort and contract. *Craft R. M. Co.* v. *Quinnipiac Brewing Co.* 63 Conn. 551, 29 Atl. Rep. 76, 25 L. R. A. 856; *Humphrey* v. *Merriam*, 37 Minn. 502, 35 N. W. Rep. 365; *McKenzie* v. *Hatton*, 6 Miscl. Rep. 153, 26 N. Y. Supp. 873.

PLEADING—NON DAMNIFICATUS—DEMURRER.—The plaintiff set out in the declaration that the defendant agreed to reimburse the plaintiff for all pecuniary losses sustained by fraud or dishonesty of W, their employee, and that certain sums were embezzled by the said W within the insured period. The defendant pleaded *Non damnificatus*. The defendant replied, amplifying the declaration. On demurrer to the replication of the court, considering the whole record, *Held*, that the plea was vicious. *Dime Savings Inst.* v. *American Surety Co. of New York* (1902), — N. J. —, 53 Atl. Rep. 217.

The condition of the bond was to perform a particular act, *i. e.*, to reim-

burse the plaintiff for losses. The defendant should have pleaded performance, or traversed the allegation of embezzlement. A plea that the plaintiff was not damnified when he had alleged the loss of certain moneys, was frivolous. 2 CHITTY PL. (1809 ed.) 481; *Holmes* v. *Rhodes*, 1 Bos. & P. 638-640; *Cutler* v. *Southern*, 1 Saund. 116, note 1; 5 WENTWORTH PL. 490. On demurrer, the whole record is opened, and judgment will be rendered against the party who committed the first fault in pleading. *McDonald* v. *Wilkie*, 13 Ill. 22, 54 Am. Dec. 423; *Hickok* v. *Coates*, 2 Wendell 419, 20 Am. Dec. 632.

SALES—FAILURE TO DELIVER—EFFECT OF COMMERCIAL AGENCY ON REPORTS.—Plaintiff contracted to sell and deliver underwear on credit. After a partial delivery he refused to complete the contract because of an unfavorable report as to defendant's financial standing received from a commercial agency. In an action for the price of the part already delivered, *Held*, that defendant could recoup damages for the breach of the seller's contract. *Kavanaugh* v. *Rosen* (1902), — Mich.—,92 N. W. Rep. 789.

When the buyer on credit becomes insolvent the seller may refuse to perform the contract. MECHEM ON SALES, sec. 1903. Insolvency in this connection means simply "a general inability to pay one's debts, or meet one's financial obligations." MECHEM ON SALES, secs. 1519, 1540, citing *Crummey* v. *Raudenbush*, 55 Minn. 426, 56 N. W. R. 1113; *Tuthill* v. *Skidmore*, 124 N. Y. 148, 26 N. E. R. 348. It need not be actual, but may be simply apparent insolvency. *Diem* v. *Koblitz*, 49 Oh. St. 41, 34 Am. St. 531, 29 N. E. R. 1124. Inability to pay debts as they mature in the ordinary course of business constitutes insolvency, though one's assets be actually greater than his liabilities. MECHEM ON SALES, sec. 1540, citing *Wager* v. *Hall*, 83 U. S. 584; *Bloomingdale* v. *Memphis, etc., R. Co.*, 6 Lea (Tenn.), 616; *Jeffries* v. *Fitchburg R. R.*, 93 Wis. 250, 67 N. W. R. 424, 57 Am. St. R. 919, 33 L. R. A. 351. Clearly a commercial agency report would not justify a refusal to deliver. Nor can the seller delay shipment for a reasonable length of time in order to investigate the buyer's commercial standing. *Oklahoma Vin. Co.* v. *Hamilton* (1902), — Ala. —, 32 S. Rep. 306.

SALES—PARTIAL DELIVERY.—Plaintiff's salesman took an order for jewelry, subject to approval by his employer, in which appeared this clause, "Goods delivered to customer when delivered to transportation company." As an inducement to the purchase, a showcase was to be furnished free. Plaintiff sent no notice of acceptance, but immediately shipped the showcase by freight, and later sent the jewelry by express. Defendant refused to accept the jewelry, which arrived three weeks before the showcase. In an action for the price, *Held*, there could be no recovery. *Price* v. *Engelke* (1903), — N. J. —, 53 Atl. Rep. 698.

The court says that "the contract being entire and indivisible the defendant was not bound to accept any part of the goods unaccompanied by remainder—unless she was notified that the remainder were to be delivered shortly, and not even in that event unless she was given the option to accept conditionally" the part already delivered; that delivery to the carrier must be such as would have been good if made to the vendee personally. The right to refuse a partial delivery is not waived by accepting the part shipped, unless such acceptance is voluntary and made with the knowledge that the shipper does not intend to comply fully with the contract. *Nightingale* v. *Eiseman*, 121 N. Y. 288, 24 N. E. R. 475; MECHEM ON SALES, sec. 1162. When no particular carrier is designated, the shipper may select the usual or customary one for the class of goods ordered. *Robinson* v. *Pogue*, 86 Ala. 257, 5 S. Rep.